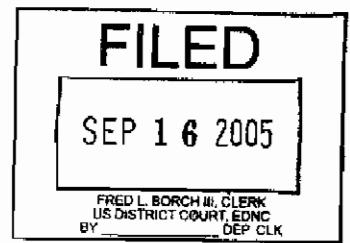


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:04-CR-211-BO



UNITED STATES OF AMERICA) DEFENDANT'S MOTION TO
) COMPEL GOVERNMENT TO
 v) COMPLY WITH CIPA
) SECTION 6(B)
)
DAVID A. PASSARO)

Defendant, by and through the undersigned counsel, pursuant to 18 U.S.C.S. Appx. § 6(b), requests that the Court compel the United States to provide the required notice to Defendant as to any *ex parte* motions already filed, and that may be filed in the future. In support of this motion, Defendant shows the Court:

1. CIPA section 6 provides the procedure for cases involving classified information. 18 U.S.C.S. Appx. §6. Section 6 spells out the manner in which parties may seek action by the Court, and provides notice requirements in subsection b. Subsection b provides:

(1) Before any hearing is conducted pursuant to a request by the United States under subsection (a), the United States shall provide the defendant with notice of the classified information that is at issue. Such notice shall identify the specific classified information at issue whenever that information previously has been made available to the defendant by the United States. When the United States has not previously made the information available to the defendant in connection with the case, the information may be described by generic category

2. The United States must provide notice to Mr. Passaro **before** seeking relief from this Court. CIPA section 6 does not provide any exemption for such notice in the event the Government seeks *ex parte* relief from the Court.

3. Defendant is aware that the United States has invoked section 6 at least once in this case, but has failed to provide the required notice, generic or otherwise, to Defendant. Defendant is thus unable

to adequately seek relief from this Court, nor to properly preserve issues for potential appeal.

WHEREFORE, Defendant Passaro requests that this Court order the United States to provide the notice it should have provided for any matters for which it has previously sought relief, and further be required to provide such notice in advance of future section 6 pleadings.

Respectfully submitted this 16th day of September 2005.

Thomas P. McNamara
THOMAS P. McNAMARA
Federal Public Defender
N.C. State Bar No. 5099

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon:

JAMES A. CANDELMO
Assistant United States Attorney
Suite 800, Federal Building
310 New Bern Avenue
Raleigh, NC 27601-1461

by hand delivering to Jennifer Myers, United States District Court Clerk, for courier pick-up by the United States Attorneys Office with a copy of the foregoing sent via secure facsimile to the Court Security Officer for classification review on,

This the 16th day of September, 2005.

Thomas P. McNamara
THOMAS P. McNAMARA
Federal Public Defender
N.C. State Bar No. 5099